

APPEAL NO. 022264
FILED SEPTEMBER 24, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 4, 2002, with the record closing on August 6, 2002. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the third quarter. The claimant appeals the determination on legal and evidentiary grounds. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant is not entitled to third quarter SIBs. At issue was whether the claimant had a total inability to work during the qualifying period, thereby satisfying the good faith job search requirement of Section 408.142 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). This was a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The hearing officer considered the claimant's evidence and found that the claimant did not satisfy the above referenced good faith criteria. In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The claimant argues that the hearing officer applied the wrong criteria in reaching his decision, pointing out that the decision fails to include specific findings concerning the claimant's ability to work during the qualifying period. In the "Statement of the Evidence and Discussion" portion of the decision, the hearing officer states, "Claimant failed to make any effort to seek any employment *when she had some ability to work during the subject qualifying period.*" (Emphasis added). In view of this statement, we are satisfied that the hearing officer decided this case under the proper criteria—i.e. whether the claimant satisfied the good faith requirement because of a total inability to work during the qualifying period for the third quarter.

Next, the claimant asserts that the hearing officer's finding on the matter of "direct result" compels a determination that the claimant is entitled to third quarter SIBs. We have held that the "good faith" and "direct result" requirements are distinct and place different burdens on the claimant. Texas Workers' Compensation Commission Appeal No. 970426, decided April 23, 1997. In this instance, the claimant, in order to establish "direct result," needed only to show that she sustained an injury with lasting

effects and could not reasonably perform the type of work being done at the time of the injury (Texas Workers' Compensation Commission Appeal No. 950376, decided April 26, 1995); while, in order to establish "good faith," the claimant was required to provide a narrative report from a doctor which specifically explained how the injury caused a total inability to work, and no other records showed that the claimant was able to return to work during the qualifying period (Rule 130.102(d)(4)). As stated above, the hearing officer's determination that the claimant did not satisfy the good faith requirement and is not entitled to third quarter SIBs is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

The claimant also asserts that the hearing officer erred by not allowing her to read into the record her Exhibit No. 8, page 2—a letter from the claimant's treating doctor regarding her inability to work. Our review of the record reveals that the exhibit was admitted into evidence and considered by the hearing officer in reaching a decision. Accordingly, we find no reversible error.

Finally, the claimant attached new evidence to her appeal, which would purportedly show that she is entitled to third quarter SIBs under a theory of "no ability to work." Documents submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). The evidence offered is cumulative in nature and is not so material that it would probably produce a different result. The evidence, therefore, does not meet the requirements for newly discovered evidence and will not be considered on appeal.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Margaret L. Turner
Appeals Judge